

Introduced by Senator Torlakson

February 23, 2007

An act to amend Section 1255.410 of, and to add Section 1250.115 to, the Code of Civil Procedure, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

SB 698, as amended, Torlakson. Eminent domain.

~~(1) The~~

The California Constitution authorizes governmental entities to take or damage private property for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner.

The Eminent Domain Law provides the procedure for the exercise of the constitutional power and authorizes the plaintiff to make an application to the court to take possession of property prior to judgment and sets forth the procedures the plaintiff must follow. Existing law requires, in this regard, that the plaintiff describe the property which the plaintiff is seeking to possess in his or her motion, to include a statement describing the defendant's right to oppose the motion, and serve a copy of that motion on the defendant owner of the property and the occupants, if any. Existing law permits a defendant or occupant of the property to oppose the motion and seek a hearing on the motion regardless of whether the hardship of having possession taken at the time specified in the order is substantial. Existing law requires the written opposition to be signed under penalty of perjury.

The bill would provide that, if the defendant opposes the motion to take possession of the property prior to judgment, and if the written

opposition asserts a hardship, it shall be supported by a declaration signed under penalty of perjury stating facts supporting the hardship. The bill would also require ~~a person~~ *the governmental entity* exercising the power of eminent domain to provide a defendant property owner, at the time ~~a complaint is filed~~ *of sending an offer to purchase*, an informational pamphlet outlining the process of eminent domain and the property owner's rights under the Eminent Domain Law.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1250.115 is added to the Code of Civil
2 Procedure, to read:

3 1250.115. At the time of ~~filing the complaint with the court,~~
4 ~~the plaintiff shall provide a defendant property owner an~~ *sending*
5 *an offer to purchase, the governmental entity shall provide the*
6 *property owner with an* informational pamphlet outlining the
7 process of eminent domain and the property owner's rights under
8 the Eminent Domain Law.

9 SEC. 2. Section 1255.410 of the Code of Civil Procedure is
10 amended to read:

11 1255.410. (a) At the time of filing the complaint or at any time
12 after filing the complaint and prior to entry of judgment, the
13 plaintiff may move the court for an order for possession under this
14 article, demonstrating that the plaintiff is entitled to take the
15 property by eminent domain and has deposited pursuant to Article
16 1 (commencing with Section 1255.010) an amount that satisfies
17 the requirements of that article.

18 The motion shall describe the property of which the plaintiff is
19 seeking to take possession, which description may be by reference
20 to the complaint, and shall state the date after which the plaintiff
21 is seeking to take possession of the property. The motion shall
22 include a statement substantially in the following form: "You have
23 the right to oppose this motion for an order of possession of your
24 property. If you oppose this motion you must serve the plaintiff
25 and file with the court a written opposition to the motion within
26 30 days from the date you were served with this motion." If the
27 written opposition asserts a hardship, it shall be supported by a

1 declaration signed under penalty of perjury stating facts supporting
2 the hardship.

3 (b) The plaintiff shall serve a copy of the motion on the record
4 owner of the property and on the occupants, if any. The plaintiff
5 shall set the court hearing on the motion not less than 60 days after
6 service of the notice of motion on the record owner of unoccupied
7 property. If the property is lawfully occupied by a person dwelling
8 thereon or by a farm or business operation, service of the notice
9 of motion shall be made not less than 90 days prior to the hearing
10 on the motion.

11 (c) Not later than 30 days after service of the plaintiff's motion
12 seeking to take possession of the property, any defendant or
13 occupant of the property may oppose the motion in writing by
14 serving the plaintiff and filing with the court the opposition. If the
15 written opposition asserts a hardship, it shall be supported by a
16 declaration signed under penalty of perjury stating facts supporting
17 the hardship. The plaintiff shall serve and file any reply to the
18 opposition not less than 15 days before the hearing.

19 (d) (1) If the motion is not opposed within 30 days of service
20 on each defendant and occupant of the property, the court shall
21 make an order for possession of the property if the court finds each
22 of the following:

23 (A) The plaintiff is entitled to take the property by eminent
24 domain.

25 (B) The plaintiff has deposited pursuant to Article 1
26 (commencing with Section 1255.010) an amount that satisfies the
27 requirements of that article.

28 (2) If the motion is opposed by a defendant or occupant within
29 30 days of service, the court may make an order for possession of
30 the property upon consideration of the relevant facts and any
31 opposition, and upon completion of a hearing on the motion, if the
32 court finds each of the following:

33 (A) The plaintiff is entitled to take the property by eminent
34 domain.

35 (B) The plaintiff has deposited pursuant to Article 1
36 (commencing with Section 1255.010) an amount that satisfies the
37 requirements of that article.

38 (C) There is an overriding need for the plaintiff to possess the
39 property prior to the issuance of final judgment in the case, and

1 the plaintiff will suffer a substantial hardship if the application for
2 possession is denied or limited.

3 (D) The hardship that the plaintiff will suffer if possession is
4 denied or limited outweighs any hardship on the defendant or
5 occupant that would be caused by the granting of the order of
6 possession.

7 (e) (1) Notwithstanding the time limits for notice prescribed
8 by this section and Section 1255.450, a court may issue an order
9 of possession upon an ex parte application by a water, wastewater,
10 gas, electric, or telephone utility, as the court deems appropriate
11 under the circumstances of the case, if the court finds each of the
12 following:

13 (A) An emergency exists and as a consequence the utility has
14 an urgent need for possession of the property. For purposes of this
15 section, an emergency is defined to include, but is not limited to,
16 a utility's urgent need to protect the public's health and safety or
17 the reliability of utility service.

18 (B) An emergency order of possession will not displace or
19 unreasonably affect any person in actual and lawful possession of
20 the property to be taken or the larger parcel of which it is a part.

21 (2) Not later than 30 days after service of the order authorizing
22 the plaintiff to take possession of the property, any defendant or
23 occupant of the property may move for relief from an emergency
24 order of possession that has been issued under this subdivision.
25 The court may modify, stay, or vacate the order upon consideration
26 of the relevant facts and any objections raised, and upon completion
27 of a hearing if requested.